

CHRISTOPHER I. BRAIN
TOUSLEY BRAIN STEPHENS PLLC
1700 Seventh Avenue, Suite 2200
Seattle, WA 98101
Telephone: (206) 682-5600
Facsimile: (206) 682-2992
Email: cbrain@tousley.com

CYNTHIA M. COHEN
PAUL HASTINGS LLP
515 South Flower Street 25th Floor
Los Angeles, CA 90071
Telephone: (213) 683-6000
Facsimile: (213) 627-0705
Email: cynthiacohen@paulhastings.com

10 Attorneys for Defendant
ORA Talus 90, LLC

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

TALUS 7 & 8 INVESTMENT, LLC,

NO. 2:16-cv-01502-JLR

Plaintiff,

V.

ORA TALUS 90, LLC,

**ORA TALUS 90, LLC'S RESPONSE
TO "ORDER TO SHOW CAUSE
REGARDING SUBJECT MATTER
.JURISDICTION"**

Defendant.

Defendant ORA Talus 90, LLC (“ORA Talus”), by its attorneys, hereby responds to this Court’s “Order to Show Cause Regarding Subject Matter Jurisdiction” (the “OSC”) as follows:

1. The gravamen of the damages claim in the complaint herein is the allegation that plaintiff Talus 7 & 8 Investment, LLC (“Talus 7 & 8”) will suffer “significant monetary damage” if an inability to utilize the Construction and Utility Easement prevents Talus 7 & 8 from consummating a sale of the “Talus 7 & 8 Parcel” (as defined in the complaint) to an

RESPONSE TO “ORDER TO SHOW CAUSE REGARDING SUBJECT MATTER JURISDICTION” (2:16-cv-01502-JLR)

1 unidentified “potential buyer.” (Complaint ¶ 3.8.) By this allegation (which ORA Talus
2 disputes), the complaint puts in issue the money Talus 7 & 8 will realize from the sale to this
3 “potential buyer” and makes that money the amount in controversy for purposes of diversity
4 subject matter jurisdiction.

5 2. Although Talus 7 & 8 has not provided this Court or ORA Talus with the
6 purchase and sale agreement to the “potential buyer,” ORA Talus has obtained sufficient
7 information from other sources, including recorded documents, to put the requisite
8 jurisdictional meat on the complaint’s bare bones damage claim.

9 3. The Talus 7 & 8 Parcel is a 57 lot plat. Annexed hereto as Exhibit 1 is a true
10 and correct copy of the Metroscan printout reflecting a land value of \$13,702,000 for the Talus
11 7 & 8 Parcel.

12 4. Recorded documents reflect that the Talus 7 & 8 Parcel is encumbered by a
13 Deed of Trust, Security Agreement, Assignment of Rents and Leases, Assignment of Contract
14 and Plans, and Fixture Filing (the “Deed of Trust”), recorded on November 6, 2014. Annexed
15 hereto as Exhibit 2 is a true and correct copy of the Deed of Trust. The Deed of Trust reflects
16 that the original principal balance of the promissory note secured by the Deed of Trust was
17 \$10,373,000. (Deed of Trust ¶ 1.2.1.)

18 5. Other recorded documents -- the Memorandum of Purchase and Sale
19 Agreement, recorded on January 13, 2016, (the “Memorandum”) -- reflect that the Talus 7 & 8
20 Parcel is the subject of a Purchase and Sale Agreement between Talus 7 & 8, as Seller, and Toll
21 WA LP, as Buyer. This is the sale to the “potential buyer” to which paragraph 3.8 of the
22 complaint refers. The Memorandum does not specify the purchase price for this sale, but ORA
23 Talus is informed that the purchase price is \$425,000 per lot for the 57 lots -- a total purchase
24 price of \$24,225,000.

25 6. Whether the current balance of the promissory note secured by the Deed of
26 Trust remains \$10,373,000 or has been paid down in the almost two years since the Deed of
27

**RESPONSE TO “ORDER TO SHOW CAUSE REGARDING
SUBJECT MATTER JURISDICTION” (2:16-cv-01502-JLR)**

Trust was recorded, and whether the amount of value Talus 7 & 8 will derive from the sale to the “potential buyer” is the difference between the balance on the note and the land value of \$13,702,000 reflected in the Metroscan (*i.e.*, a difference of \$3,329,000) or what ORA Talus understands is the purchase price of \$24,225,000 for the sale memorialized in the Memorandum (*i.e.*, a difference of \$13,852,000), Exhibits 1, 2 and 3 annexed hereto are sufficient to establish by a preponderance of the evidence before this Court that the amount Talus 7 & 8 has placed in controversy by its complaint is more than \$75,000.

7. Based upon all of the foregoing, ORA Talus submits that this Court should discharge the OSC and ORA Talus respectfully requests that the Court do so.¹

DATED this 31st day of October, 2016

TOUSLEY BRAIN STEPHENS PLLC

By: /s/Christopher I. Brain

Christopher I. Brain, WSBA #5054
cbrain@tousley.com
1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
Telephone: 206.682.5600
Fax: 206.682.2992

PAUL HASTINGS LLP
CYNTHIA M. COHEN

By: /s/Cynthia M. Cohen
Cynthia M. Cohen, Admitted Pro Hac Vice
cynthiacohen@paulhastings.com
515 South Flower Street, 25th Floor
Los Angeles, California 90071
Telephone: 213.683.6000
Fax: 213.627.0705

Attorneys for Defendant, ORA Talus 90, LLC

¹ In light of the foregoing, ORA Talus does not address in this response whether a counterclaim may be considered in determining the amount in controversy.

RESPONSE TO “ORDER TO SHOW CAUSE REGARDING SUBJECT MATTER JURISDICTION” (2:16-cv-01502-JLR)

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

DATED at Seattle, Washington, this 31st day of October, 2016.

/s/Christopher I. Brain

Christopher I. Brain, WSBA #5054
cbrain@tousley.com

Attorneys for Defendant, ORA Talus 90, LLC
TOUSLEY BRAIN STEPHENS PLLC
1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
Tel: 206.682.5600
Fax: 206.682.2992

RESPONSE TO “ORDER TO SHOW CAUSE REGARDING SUBJECT MATTER JURISDICTION” (2:16-cv-01502-JLR)